

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO (CANTON)**

IN RE:

Daniel McCarthy
Christina McCarthy
Debtors

* CASE NO. 19-61737
* CHAPTER 7
* CHIEF JUDGE RUSS KENDIG
*
* **MOTION FOR LEAVE TO FILE THIS**
* **CASE REGARDLESS OF 11 U.S.C.**
* **§109(g)(2)**
*

NOW COME Debtors, Daniel and Christina McCarthy, by and through counsel, and move this Honorable Court for leave to file this chapter 7 case regardless of 11 U.S.C. §109(g)(2).

In August 2016, Debtors surrendered their 2009 Kia Optima to Creditor Byrider Finance LLC dba CNAC ("hereinafter *CNAC*"). Debtors filed for Chapter 13 relief on November 7, 2018 under Case 18-62245, listed CNAC as an unsecured creditor, and had their Plan confirmed on February 7, 2019. On February 21, 2019, CNAC filed its Motion for Relief from Stay for the 2009 Kia Optima, evidently because they did not sell the vehicle for almost three years. The Debtors did not object to CNAC obtaining relief from stay. This Honorable Court granted relief on April 3, 2019. Due to a reduction in household income, the Debtors continued to struggle with their Chapter 13 payments and it became evident in June that they were not going to be able to continue. Debtors filed a Motion to Voluntarily Dismiss their Chapter 13 on June 28, 2019 and the Court granted their Motion on August 14, 2019. On July 16, 2019, CNAC sold the Kia. After a review of their household income, Debtors were then eligible to file for Chapter 7. On August 23, 2019, Debtors filed a Chapter 7 Petition, again listed CNAC as an unsecured creditor, and was assigned the case number above.

The United States Trustee's Office has indicated to Counsel that Debtors are barred from filing Chapter 7 for 180 days due to 11 U.S.C. §109(g)(2). Debtors do not believe they fall under this restriction as the motion for relief from stay by CNAC was fully addressed, CNAC liquidated the asset, and is not adversely affected by the automatic stay or filing of this new petition. As previously indicated, the vehicle was voluntarily surrendered and sold by Creditor at least 60 days ago, prior to the filing of this case. CNAC has been properly served in Debtors' Chapter 13 and 7 bankruptcy and no Creditor has filed any objections to Debtors' refiling.

Debtors believe that the congressional intent underlying §109(g)(2) was to protect the creditor from repeat filers stalling or stopping creditors from repossessing and disposing of collateral to which it was entitled. This case is differentiated. The vehicle was surrendered years ago and already sold at auction prior to the filing of this Chapter 7 case.

WHEREFORE, Debtors seek this Court's leave to file this chapter 7 case regardless of 11 U.S.C. §109(g)(2).

Respectfully submitted,

/s/ Deborah L. Mack #0067347
Attorney Deborah L. Mack, JD/MBA
53 E Main St, Lexington, OH 44904
419.884.4600 * 800.410.3620 facsimile
Debbie@OhioFinancial.Lawyer
Attorney for Debtors

CERTIFICATE OF SERVICE

A copy of the foregoing Motion was served by regular U.S. Mail as permitted by the rules on September 25, 2019,

via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice List:

- United States Trustee (Registered address)@usdoj.gov
- Tiiara Patton tiiara.patton@usdoj.gov
- Josiah L. Mason jlmasontrustee@zoominternet.net

And upon the following parties at the addresses stated below:

Daniel & Christina McCarthy
231 Clare Rd
Ontario, OH 44906

and all parties listed on the creditor matrix

/s/ Deborah L. Mack

Label Matrix for local noticing
0647-6
Case 19-61737-rk
Northern District of Ohio
Canton
Wed Sep 25 10:28:01 EDT 2019

Ability Recovery Services
PO Box 4031
Wyoming, PA 18644-0031

Avita Health System
PO Box 637235
Cincinnati, OH 45263-7235

Chase Auto
PO Box 24696
Columbus, OH 43224-0696

Credit Acceptance Corp.
25505 W 12 Mile Rd
Southfield, MI 48034-8316

Direct TV
PO Box 5007
Carol Stream, IL 60197-5007

Franklin County Common Pleas
345 S High St
Columbus, OH 43215-4587

Mansfield Municipal Court
30 N Diamond St
Mansfield, OH 44902-1738

(p)OHIO ATTORNEY GENERAL'S OFFICE
ATTN BANKRUPTCY UNIT COLLECTIONS ENFORCEMENT
150 E GAY ST
21ST FLOOR
COLUMBUS OH 43215-3191

PNC Bank
PO Box 61047
Harrisburg, PA 17106-1047

United States Bankruptcy Court
Ralph Regula U.S. Courthouse
401 McKinley Avenue SW
Canton, OH 44702-1745

American Education Services
PO Box 61047
Harrisburg, PA 17106-1047

CNAC
12802 Hamilton Crossing Blvd
Carmel, IN 46032-5424

(p)CHOICE RECOVERY INC
1550 OLD HENDERSON ROAD
STE 100
COLUMBUS OH 43220-3662

Credit Management
4200 International Pkwy
Carrollton, TX 75007-1912

Eagle Loan Company of Ohio, Inc.
331 Lexington Springmill Rd #135
Ontario, OH 44906-1373

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

(p)MEADE & ASSOCIATES INC
ATTN BANKRUPTCY DEPARTMENT
737 ENTERPRISE DRIVE
LEWIS CENTER OH 43035-9438

Ohio Attorney General
30 E Broad St
Columbus, OH 43215-3400

(p)PORTFOLIO RECOVERY ASSOCIATES LLC
PO BOX 41067
NORFOLK VA 23541-1067

AFNI
PO Box 3427
Bloomington, IL 61702-3427

Attorney General of United States
Dept of Justice Tax Div Civil
Trial Section, Northern Region
PO Box 55
Washington, DC 20044-0055

Capitol One Bank USA Na
PO Box 85015
Richmond, VA 23285-5015

Christopher B Murphy
PO Box 2190
Westerville, OH 43086-2190

Debt Recovery Solutions
1669 Lexington Ave
Suite A
Mansfield, OH 44907-2944

Federal Loan Servicing
PO Box 60610
Harrisburg, PA 17106-0610

Kroger/ US Bank
PO Box 790408
Saint Louis, MO 63179-0408

North Coast Financial
5299 Monroe St
Toledo, OH 43623-3139

Ohio Dept of Taxation
Attn Bankruptcy
PO Box 530
Columbus, OH 43216-0530

Radiology Assoc of Mansfield
PO Box 757
Mansfield, OH 44901-0757

Richard W Yost 366 E Broad St Columbus, OH 43215-3819	US Dept of Education PO Box 7859 Madison, WI 53707-7859	Verizon Wireless PO Box 4002 Acworth, GA 30101-9003
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Christina Nichole McCarthy 231 Clare Rd Ontario, OH 44906-1363	Daniel William McCarthy 231 Clare Rd Ontario, OH 44906-1363	Deborah L. Mack 53 E Main Street Lexington, OH 44904-1224
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Josiah L. Mason
Canton
153 W Main Street
PO Box 345
Ashland, OH 44805-0345

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Choice Recovery Inc PO Box 20790 Columbus, OH 43220	IRS 200 N High St Room 425 Columbus, OH 43215	(d)IRS Insolvency Group 1240 E 9th St Room 493 Cleveland, OH 44199
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Meade & Associates 737 Enterprise Dr Lewis Center, OH 43035	Ohio Attorney General 150 E Gay St Columbus, OH 43215	Portfolio Recovery Associates 120 Corporate Blvd Ste 100 Norfolk, VA 23502
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End of Label Matrix	
Mailable recipients	36
Bypassed recipients	0
Total	36